FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

APPEAL FROM ORDER NO. 792 OF 2004.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr.Menon i/b. N.B.Khan for the appellant.

R.D.Mishra for the respondent.

CORAM: V.C.DAGA,J.

DATED: 14th September 2004.

P.C.:

. Heard learned counsel for the appellant.

. This appeal is directed against the order dated 16th August, 2004 passed by the City Civil Court at Bombay rejecting Notice of Motion No.423 of 2004 taken out in S.C.Suit No.1031 of 1985.

. The facts giving rise to the present appeal, in nutshell, are that the appellant/ original plaintiff filed suit for partition being S.C.Suit No.1031 of 1985. In the said suit filed in the year

1985, he took out notice of motion somewhere in January, 2004 praying for appointment of Receiver with respect to the suit properties, viz. Shop No.2, Ground Floor, Misquitta Chawl, Marol Village, J.B.Nagar, Andheri (East), Bombay- 400 059 and Room No.1, Sultan Lala Chawl, Marol Village, J.B.Nagar, Andheri (East), Bombay- 400 059 .

. So far as prayer for appointment of Receiver is concerned, the same has been rightly rejected by the trial Court in view of the fact that the respondent/ original defendant is depositing Rs.2,000/- per month as ordered by the trial Court.

. So far as suit Room No.1 is concerned, the defendant is already in possession of the said property. Therefore, he cannot be deprived of his possession during pendency of the suit, especially, in a suit for partition by invoking powers under order XL rule 1 of C.P.C.

. In the above view of the matter, trial Court is perfectly justified in refusing to appoint Court Receiver with respect to the suit property.

. Mr.Menon, learned counsel for the appellant submitted that there is apprehension that the respondent/ defendant may transfer suit shop in favour of any third person and, therefore, under order 39 rules 1 and 2 the respondent/defendant is liable to be prevented from transferring and/or creating third party interest with respect to the suit shop No.2. With this, he turned to the affidavit filed in support of the notice of motion and tried to locate his apprehension sought to be pleaded through oral submissions. However, he could not get any material in his affidavit to justify his apprehension. In this view of the matter, no fault can be found with the impugned order of the trial Court.

. The appeal is, therefore, dismissed in limine with no order as to costs.

*****